

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

2/20/02

Hearing:
November 14, 2001

Paper No. 32
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re California Innovations Inc.

Serial No. 74/650,703

Charles M. Marmelstein and Pamela Haughton-Denniston of
Arent Fox Kintner Plotkin & Kahn, PLLC for California
Innovations Inc.

Jeri J. Fickes, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Hohein, Hairston and Walters, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by California
Innovations Inc., a Canadian corporation, to register the
composite mark CALIFORNIA INNOVATIONS and design, as shown
below,

for the following goods:

automobile visor organizers, namely, holders for personal effects, and automobile trunk organizers for automotive accessories in International Class 12; backpacks in International Class 18; thermal insulated bags for food and beverages, thermal insulated tote bags for food or beverages, and thermal insulated wraps for cans to keep the containers cold or hot in International Class 21; and nylon, vinyl, polyester and/or leather bags for storage and storage pouches in International Class 22.¹

Registration has been finally refused under Section 2(e)(3) of the Trademark Act, 15 U.S.C. §1052(e)(3), on the ground that the mark as a whole, if applied to applicant's goods, would be primarily geographically deceptively misdescriptive of them.

Applicant and the Examining Attorney have submitted briefs and an oral hearing was held before the Board.

In order to establish a *prima facie* case for refusal of registration under Section 2(e)(3), the Examining Attorney must show that the primary significance of applicant's composite mark is its geographical connotation,

¹ Serial No. 74/650,703, filed March 23, 1995, based on an allegation of a bona fide intention to use the mark in commerce. Applicant asserted an additional basis for filing, namely Canadian Registration No. 491,564 under Section 44(e) of the Trademark Act, and claims priority under Section 44(d) of the Act based on the filing in Canada of the application that matured into the noted registration. The word CALIFORNIA has been disclaimed apart from the mark as shown. In addition, the application contains the statement that "The stippling shown in the drawing is not a feature of the mark and is not intended to indicate color."

and that members of the public would believe that the goods for which the mark is sought to be registered originate in the geographic place named in the mark when, in fact, the goods do not originate in that geographic place. See *In re Save Venice New York Inc.*, 259 F.3d 1346, 56 USPQ2d 1778 (Fed. Cir. 2001); *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999); *The Institut Nationale des Appellations D'Origine v. Vintners International Co. Inc.*, 958 F.2d 1574, 22 USPQ2d 1190 (Fed. Cir. 1992); *In re Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); and *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985). In the instant case, there is no dispute that applicant's goods will not originate in California. Moreover, as the Examining Attorney has noted, this Board stated in *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988), that "[t]here can be no dispute that California, one of the largest and most populous states in the United States, is a place known generally to the public and is neither remote nor obscure."

It is the Examining Attorney's position that the primary significance of applicant's mark as a whole is the geographic place "California." The Examining Attorney acknowledges that the entire mark is more than the word CALIFORNIA. However, the Examining Attorney argues that

neither the word INNOVATIONS nor the design element detracts from the geographic significance of the word CALIFORNIA contained in the mark.

Further, in view of the evidence of a goods/place association which has been made of record in this case, the Examining Attorney argues that the public will be likely to believe that applicant's goods come from California. In this regard, the Examining Attorney submitted, inter alia, excerpts retrieved from the Internet which indicate that some manufacturers and distributors of backpacks, tote bags, luggage, computer cases, and sport bags are headquartered in California; excerpts of articles retrieved from the NEXIS database which make reference to companies headquartered in California which manufacture automobile accessories such as auto organizers; and an excerpt of an article from the NEXIS database which refers to the "very serious apparel and sewn products industry" in the state of California.

Applicant, on the other hand, argues that its mark CALIFORNIA INNOVATIONS and design is arbitrary or suggestive of a mindset or lifestyle rather than primarily geographically deceptively misdescriptive; and that the primary significance of the mark, when viewed in its entirety, is not geographic. Applicant maintains that the

word CALIFORNIA connotes a lifestyle characterized by creativity and freedom from conventional thinking and behavior. In addition, applicant argues that the design element and the word INNOVATIONS contained in the mark suggest a rising sun or the dawning of a new day. Thus, it is applicant's position that the mark as a whole suggests new and innovative ideas and products.

Further, applicant argues that there is no goods/place association between the goods identified in its application and the state of California. In support of its position, applicant submitted excerpts retrieved from the NEXIS database which it maintains reflect the significance of California as symbolic in American culture of a lifestyle and a state of mind. Also, applicant submitted printouts from the Thomas Register of American Manufacturers demonstrating that the vast majority of U.S. companies which manufacture goods of the type involved in this appeal are located outside of California. Finally, applicant submitted copies of third-party registrations for composite marks which include the word CALIFORNIA. Applicant contends that its mark is similar to the marks in those registrations and is equally entitled to registration.

In this case, we agree with the Examining Attorney that applicant's mark CALIFORNIA INNOVATIONS and design is

primarily geographically deceptively misdescriptive of applicant's goods. To us, the word CALIFORNIA is a prominent part of applicant's mark and is not overshadowed by either the word INNOVATIONS or the design element. Clearly, consumers viewing the word CALIFORNIA would understand it to refer the state of California. Moreover, although the design element in applicant's mark does not have a geographical connotation such that it reinforces the primary significance of CALIFORNIA as geographical, we do not find the design to be so unique or distinctive as to detract from the geographical significance of CALIFORNIA. Also, the word INNOVATIONS does not detract from the primary significance of CALIFORNIA as geographical, but rather suggests innovative products originating from California.

With respect to applicant's argument that the mark conveys the idea of a creative/non-conventional lifestyle or mindset, such association does not contradict the primary geographic significance of the mark, as the association may be made for the precise reason that the primary significance of California is a state in the United States. See e.g., *In re Wada*, 48 USPQ2d 1689 (TTAB 1998), *aff'd*, supra [NEW YORK WAYS GALLERY is primarily geographically deceptively misdescriptive of hand bags,

luggage and related goods which do not originate from New York].

We turn then to the question of whether purchasers are likely to make a goods/place association between the goods identified in applicant's application and California. In addition to the evidence submitted by the Examining Attorney noted above, the listing for "California" in The Columbia Lippincott Gazetteer of the World (1962), at p. 311 states, in pertinent part, that:

Since the end of the Second World War, diversified and heavier industry has increased greatly ... mfg. of lumber, furniture, and other wood products, rubber goods, paper, textiles, apparel, leather, and plastics are of chief importance.²

In addition, the entry for "California" in The New Encyclopedia Britannica, Vol. 2 (1988), at p. 743 notes, in pertinent part, that:

In economic terms, California is more aptly compared with nations than with other U.S. states. The total value of its goods and services is surpassed only by the United States as a whole, the Soviet Union, West Germany, France, and Japan.

² It is settled that the Board may properly take judicial notice of entries in dictionaries and other standard reference works. See, e.g., *In re Hartop & Brandes*, 311 F.2d 249, 135 USPQ 419 (CCPA 1962); and *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

There can be no doubt that California is a major producer of a wide variety of goods, and in particular, goods of the type involved in this appeal. While we recognize that based on the Thomas Register listings, California is not the leading manufacturer of goods of the type involved in this appeal, as pointed out by the Examining Attorney, at least sixteen manufacturers of backpacks, two manufacturers of leather products, four manufacturers of nylon pouches and one manufacturer of automobile accessories are located in California. Thus, there is a reasonable basis for concluding that the purchasing public would make a goods/place association. See *In re Save Venice New York Inc.*, supra; and *In re Broyhill Furniture Industries, Inc.*, 60 USPQ2d 1511 (TTAB 2001). In any event, it is not required that a geographic place be famous or otherwise noted for goods in order for consumers to mistakenly believe that a goods/place association exists. See *In re Loew's Theatres, Inc.*, supra; *In re Broyhill Furniture Industries, Inc.*, supra; and *In re Jack's Hi-Grade Foods, Inc.*, 226 USPQ 1028 (TTAB 1985).

Finally, with respect to the third-party registrations for composite marks consisting of CALIFORNIA, each application for registration of a mark for particular goods or services must be decided on its own set of facts. See *In re BankAmerica Corporation*, 231 USPQ 873, 876 (TTAB

1986) and cases cited therein. We are not privy to the reasons for allowance of the third-party registrations upon which applicant relies, and the determination of registrability by the Trademark Examining Operation of different marks cannot control the result in this case.

Decision: The refusal to register is affirmed.

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